

Message Text

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C O N F I D E N T I A L PRETORIA 4056

E.O. 11652: GDS

TAGS: PINS, WA

SUBJ: HARSE SAG MEASURES IN SWA

REF: STATE 215515

1. DURING MEETING WITH FONSEC FOURIE NOVEMBER 6, AMBASSADOR DREW EXTENSIVELY ON REFTEL TO EXPRESS USG'S DEEP CONCERN ABOUT EVENTS IN SWA. HE STRESSED LIKELY ADVERSE EFFECTS OF SAG'S PRESENT COURSE THERE AND FACT THAT SAG COULD NOT EVADE ULTIMATE RESPONSIBILITY FOR ACTIONS OF TRIBAL AUTHORITIES.

2. RESPONDING, FOURIE INSISTED THAT SAG NOT ACCOUNTABLE FOR EVERYTHING DONE BY LOCAL AUTHORITIES IN OWAMBO "OR OTHER SIMILAR TERRITORIES". HE PRESENTED AMBASSADOR WITH PAPER OUTLINING SAG'S POSITION, NOTING THAT HE HAD ALSO GIVEN PAPER TO BRITISH AMBASSADOR WHO, BECAUSE OF QUESTION IN UK PARLIAMENT, HAD ALSO INQUIRED ABOUT FLOGGINS IN SWA.

3. PAPER (BEING POUCHED AF/S) NOTES THAT IT SAG POLICY TO ALLOW INDIGENOUS PEOPLES OF SWA TO GOVERN THEMSELVES AS MUCH AS POSSIBLE AND WITHOUT SAG'S INTERFERENCE WITH -TRADITIONAL INSTITUTIONS AND USAGES". THIS DONE IN ACCORDANCE WITH WISHES OF PERMANENT MANDATES COMMISSION. THUS IT ALWAYS PRACTICE IN OWAMBO THAT OFFENDERS BE BROUGHT BEFORE LOCAL COURTS AND TRIED AND SENTENCED

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IN ACCORDANCE WITH CUSTOMARY LAW.

4. IN 1967, A PROCLAMATION WAS ISSUED CLARIFYING, INTER ALIA, JURISDICTION OF SWA TRADITIONAL COURTS TO TRY CERTAIN OFFENSES. IT ALSO PROVIDED THAT "NO PUNISHMENT INVOLVING DEATH, MUTILATION OR GRIEVOUS BODILY HARM MAY BE INFLICTED". FOURIE SAID IT IS SAG'S VIEW THAT THIS PROCLAMATION PROTECTS PEOPLE AGAINST CORPORAL PUNISHMENT. SAG ACKNOWLEDGED THAT TRADITIONAL COURTS HAD RECENTLY "IMPOSED CORPORAL PUNISHMENT UPON VARIOUS PERSONS AND THAT THE SENTENCES WERE CARRIED OUT". HOWEVER, THOSE WHO WERE PUNISHED "COULD HAVE APPEALED" TO COURT OF NATIVE COMMISSIONER AND EXECUTION OF SENTENCES WOULD HAVE BEEN SUSPENDED. SAG HAS NOTED SOME OF THE OVAMBOS INVOLVED HAD APPLIED TO SWA SUPREME COURT FOR INTERDICTS AGAINST FLOGGING ORDERS. IT SAG'S POSITION THAT MATTER NOW AWAITS JUDGMENT OF SUPREME COURT.

5. FOURIE SAID SAG CONSIDERING OPENING OWAMBO TO "OTHERS" (PRESUMABLY INCLUDING JOURNALISTS AND FOREIGN DIPLOMATS). TIMING OF SUCH ACTION UNCERTAIN, BUT FOURIE BELIEVED IT UNLIKELY WHILE UNGA IN SESSION.

6. AMBASSADOR REITERATED OUR VIEW THAT SOUTH AFRICA WOULD BE UNABLE TO AVOID BEING HELD RESPONSIBLE FOR ACTIONS OF TRIBAL AUTHORITIES, PARTICULARLY SINCE IT MOST UNLIKELY THAT INDIVIDUALS BROUGHT TO TRIAL IN SWA WOULD HAVE KNOWLEDGE OF APPEAL PROCEDURE WHICH EXISTED. HE EMPHASIZED THAT THESE UNFORTUNATE AND WELL-PUBLICIZED DEVELOPMENTS COMPLICATED EFFORTS TO RESOLVE PROBLEM THROUGH COMMUNICATION AND DISCUSSION AMONG ALL PARTIES CONCERNED. FOURIE SAID HE FULLY UNDERSTOOD PROBLEM DEVELOPMENTS CAUSE US AND UNDERTOOK TO KEEP US INFORMED.
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